The State of South Carolina,

In the Supreme Court.

Second Circuit---County of Aiken.

THE STATE, PLAINTIFF,

against

WILLIAM CLARY, DEFENDANT.

BRIEF.

DEVORE & WOODWARD,

Defendant's (*Appellant's*) Attorneys.

JAMES ALDRICH,

Plaintiff's (*Respondent's*) Attorney.

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1885.

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THE STATE, Plaintiff,

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WILLIAM CLARY, Dnfendant.

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TESTIMONY OF CHITTY WOODWARD.

Chitty Woodward, witness for defendant:

Q. Do you live near Montmorenci? Yes, sir.

Q. Did any person come to your house on the night [in question]? A. Yes, sir.

Q. For what purpose? A. Well, sir, Jack Williams came there and waked me up, sometime in the night.

Q. At what time? A. I can't tell, sir, for I had been sleeping and I didn't have a time piece to see.

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Q. Was it after or before 12 o'clock? A. It was, I think, after 12 o'clock.

Q. What did he want with you?

(Question objected to; objection sustained.)

The Court: Did he have anything to sell to you? A. No, sir.

Q. What did you say to Jack?

(Objected to; objection sustained.)

Q. Did you see Jack Williams there? A. No, sir.

Q. Did you here him? A. Yes, sir.

Q. Did you know who he was? A. Well, sir, I taken
3 it to be him; he hailed at my house, and I taken it for his voice, and he said—

(Statement of Williams objected to; objection sustained.)

Q. Do you know Jack Williams? A. Yes, sir.

Q. Is he familiar with the premises around there? A. Yes, sir; I think so.

Q. Has he ever lived there? A. No, sir; he lives about three miles from there.

Q. How far does he live from Montmorenci? A. About
4 three miles and a half, sir.

Q. And he was there after 12 o'clock that night? A. Yes, sir.

CHARGE OF THE JUDGE.

GENTLEMEN OF THE JURY: This is an indictment for burglary and larceny. It contains two counts: The first
5 count is for burglary, and the second is for larceny. Burglary is the breaking into and entering a dwelling-house of another in the night time with a view to commit a felony. The breaking must be in the night time; after dark and before day-light; too dark to see a person by the ordinary light of the sun and before the time of day-light in the morning would enable you to recognize a person. Any removal of the fastening of a house—the ordinary fastenings—is sufficient; such as opening a latch, or raising a sash, and even coming down a chimney has been
6 held a sufficient breaking to constitute the crime if coupled with the intent to commit a felony. No matter what the fastenings are that the owner of the house puts there, other persons have no right to remove them in the night to commit a felony. In the entering of a person it is not necessary that the whole body should go in. If a man uses a false key or steals the true key to a dwelling-house and opens the door and goes in, or stands at the door and puts his hand in far enough to steal valuable property, that is

sufficient although his body did not go in at all. This law was originally intended and applied simply to the dwelling-house. Then it became to be applied to houses appurtenant to the dwelling-house; therefore it applies to the smoke-house, the dairy, the house where the chickens are kept, where the corn is kept, and the provisions for the family, and the crops; provided those houses are within the common enclosure, or the curtilage as it is called. In that case they were said to be part of the dwelling-house, and the same penalty was inflicted for the breaking and entering of them with the intent to commit a felony as for the dwelling-house itself. Not many years ago the Legislature saw fit, as it were, to enlarge the subjects of burglary as to the buildings in which the crime could be committed, and this Statute was passed without reference to the curtilage or enclosure; not only to houses within two hundred yards of the dwelling-house which were under the same protection as the dwelling-house, but it referred to any house within two hundred yards of house in which some one slept for the protection of the dwelling-house. Some difference has been made in the punishment of burglary under the Statute and burglary at common law. This is statutory burglary. The charge is that this was a corn-house—a house where provisions were kept—and although not included within the curtilage, was within two hundred yards of the dwelling-house. Now the breaking and entering must be with the intention of committing a felony. If a man breaks into a house at night with the view or intention of committing a felony, and if he is stopped the very moment he gets in or runs away before he puts his hand upon a single thing, he would be guilty if the criminal intent was there to commit the felony. So there is a case in the books where a man was detected coming down a chimney where he had not committed a felony at all, yet, the guilty intent being proved, he was held to be guilty. Therefore, if the jury come to the conclusion that the person on trial has broken into a dwelling-house or a house like the one charged

as here with the intention of committing a felony, he is just
11 guilty as though he had stolen goods the value of what would be sufficient to constitute grand larceny. Under the common law grand larceny was the stealing of any property over the value of twelve pence or about twenty-five cents, or anything below that was petit larceny. It has been contended in argument here that the defendant could not have intended to steal twenty bushels of corn as he had made no arrangements for carrying out such a purpose. That is not necessarry in a case like this. Where the larceny is from
12 the dwelling-house or the person, the old common law applies and not the Statute, as to what amount constitutes a felony. This is Statutory burglary, as I've already said, and if the party broke into and entered the house with felonious intent, he is just as guilty of the burglary as if he had stolen the property that would have amount to grand larceny.

Then there is a second count in the indictment which stands by itself. There is a count here for petit larceny
13 which by our Statute is a misdemeanor, and, as I think, has been very properly joined here. If the defendant had been tried only for the stealing of two ears of corn, he would not have been entitled to twenty challenges. He could have exercised but five. Then the questions for you are whether the defendant is guilty of breaking and entering in the night time the house alledged here with intention of committing a felony; and on the second count whether he was actually guilty of taking and carrying away the two ears of corn to the value of five cents. So
14 much for the law, gentlemen, the questions of fact are for you. You have heard the testimony, and it is entirely for the jury to say what are the real facts of the case. I have no right to tell you even that any body's house has been broken into or to say whether the defendant committed burglary or petit larceny. It is for you to take the testimony of the witnesses and to say which you do or do not believe, and what upon the whole case are the facts proven before you. In the Court of Sessions it is held

that all persons are presumed to be innocent until the State shows beyond a reasonable doubt that they are guilty. 15
And by a reasonable doubt is meant such a doubt as a sensible, prudent and careful man would act upon in the ordinary affairs of life.

I certify that the above is a true and correct transcript of the stenographic notes of T. B. Fraser's charge taken by me in the case of the State vs. William Clary.

M. F. TIGHE, 16
Acting Stenographer Second Circuit.

We consent that the appeal in this case be heard on the foregoing statement of the case.

DEVORE & WOODWARD,
Defendant's (*Appellant's*) Attorneys.

JAMES ALDRICH,
Acting Solicitor.

1st May, 1885. 17

NOTICE OF APPEAL AND EXCEPTIONS.

To the Hon. T. B. Fraser, Presiding Judge of the Court of General Sessions for Aiken County, April Term, 1885, and James Aldrich, Acting Solicitor at said Term, take notice—

That the defendant, William Clary, appeals from the 18
judgment of the Court rendered in the above case, on day of April, 1885, upon the following grounds, to wit:

1st. That his Honor erred in charging the jury that "burglary is the breaking into and entering the dwelling-house of another in the night time with a view to commit a felony."

2d. That his Honor erred in charging the jury as follows, to wit: "It has been contended in argument here

that the defendant could not have intended to steal twenty
19 bushels of corn, as he has made no arrangements for carrying out such a purpose. That is not necessary in a case like this where the larceny is from the dwelling-house or the person, then the old common law applies, and not the Statute, as to what amount constitutes a felony."

3d. That his Honor erred—after Chitty Woodward had testified "that one Jack Wil iams, on the night of the burglary, came to his house at Montmorenci after twelve o'clock and waked him; that Jack was familiar with the
20 premises around there"—in refusing to allow the said Woodward to testify that Jack Williams came to his house that night for the purpose of borrowing one dollar, and that Jack told him he would pay him in corn; and that Woodward refused to lend him the money.

4th. That his Honor erred in not allowing Jerry Coats to testify that Jack came to him about the hour the house was broken into to borrow some money, and promised to pay him in corn in a short time; and that said Jack has not paid him yet.

DEVORE & WOODWARD,
Defendant's (*Appellant's*) Attorneys.